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11 **UNITED STATES DISTRICT COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA**

13 TERRELL JONES, a California resident;  
14 MICHAEL JOHNSON, a Florida resident;  
15 DERRICK PAIGE, a Texas resident;  
16 WILFREDO BETANCOURT, a Nevada  
17 Resident; YOLANDA McBRAYER, a  
18 former Colorado resident; and MICHAEL  
19 PIERSON, a North Carolina resident,  
20 individually, and on behalf of all others  
21 similarly situated,

22 Plaintiffs,

23 vs.

24 AGILYSYS, INC., an Ohio corporation;  
25 AGILYSYS NV, LLC, a Delaware limited  
liability company; and DOES 1 through 100,  
inclusive,

26 Defendants.

27 Case No. CV12-3516 SBA

28 **COLLECTIVE ACTION**

29 **[UNOPPOSED]**

30 **DECLARATION OF ISAM C. KHOURY IN  
31 SUPPORT OF PLAINTIFFS' MOTION FOR  
32 ORDER GRANTING FINAL APPROVAL OF  
33 CLASS ACTION SETTLEMENT AND  
34 ENTERING JUDGMENT**

35 Date: May 20, 2014

36 Time: 1:00 p.m.

37 Dept: Courtroom 1 (Fourth Floor)

38 Judge: Hon. Saundra B. Armstrong

39 Filed: July 6, 2012

40 Trial date: None set

1 **COHELAN KHOURY & SINGER**

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1 I, Isam C. Khoury, declare as follows:

2 1. I am a founding partner of the law firm of Cohelan Khoury & Singer, co-  
 3 counsel of record for Plaintiffs and the class in this matter. I am duly admitted to practice  
 4 before all the courts of the state of California. The following facts are within my personal  
 5 knowledge and if called to testify I could and would competently testify thereto.

6 2. I am a 1973 Hastings School of Law graduate and was admitted to the  
 7 California State Bar in 1974 and am admitted to practice in all state courts in California and  
 8 in the following federal courts: The U.S. District Court for the Central District of California,  
 9 the U.S. District Court for the Southern District of California, and the U.S. District Court for  
 10 the Northern District of California. I have made appearances in numerous federal courts  
 11 around the country as well as the First Circuit Court of the State of Hawaii. I am AV rated  
 12 by Martindale-Hubbell, as are many attorneys in our firm.

13 3. In 1981, Timothy D. Cohelan and I formed Cohelan & Khoury, a  
 14 Partnership of Professional Law Corporations and within a few years began to focus on class  
 15 actions. In 2009, Cohelan & Khoury became Cohelan Khoury & Singer. Our firm  
 16 represents plaintiffs in complex and class action litigation, including wage and hour, labor  
 17 and employment, antitrust, consumer protection, construction defect and other public interest  
 18 type class actions. Attached hereto, and incorporated herein by this reference as Exhibit 5 is  
 19 a true and correct copy of our firm's resume.

20 4. Cohelan Khoury & Singer is certified by the State Bar of California to  
 21 provide the Mandatory Continuing Legal Education activity entitled "Litigating California  
 22 Class Actions" and conducts MCLE certified seminars on this topic. Senior Partner,  
 23 Timothy D. Cohelan, is the author of Cohelan on California Class Actions (Thomson West  
 24 1997-2013), part of Thomson West's Expert Series, which is updated annually. Managing  
 25 Partner, Michael D. Singer, is a contributing author on the CEB publication California Wage  
 26 and Hour Law: Compliance and Litigation (2010, updated annually), in which he wrote the  
 27 opening chapter overview on California Wage and Hour laws, including the public policy  
 28 underpinnings for those laws. Mr. Singer has served as a columnist for the California State

1 Bar, Litigation Section on wage and hour litigation and has contributed articles on wage and  
 2 hour and class action issues through the years to numerous California publications. He  
 3 lectures several times per year for continuing education courses on wage and hour and class  
 4 action issues at events in San Diego, Orange County, Los Angeles, and San Francisco, and  
 5 also serves as wage and hour amicus liaison for California Employment Lawyers, drafting,  
 6 reviewing, and coordinating amicus filings on wage and hour issues in the California  
 7 Supreme Court and Courts of Appeal. Mr. Singer has been engaged in the practice of labor  
 8 and employment law since 2000, handling well over 100 wage and hour class actions and  
 9 several individual labor cases, and has litigated several types of employment actions,  
 10 including complex ERISA employee welfare benefit plan cases, as well as wage and hour  
 11 class actions before Federal and State Courts in California. In addition, Mr. Singer has  
 12 drafted numerous appellate briefs as the appellant, respondent, or amicus curiae in  
 13 employment class and individual actions. As co-Class Counsel in the *Brinker Restaurant*  
 14 *Corp. v. Superior Court* [(2008)165 Cal.App.4th 25] matter, he argued before the Fourth  
 15 District Court of Appeal in May 2008 on transfer from the California Supreme Court, and  
 16 co-authored the granted Petition for Review of the July 22, 2008 decision in the California  
 17 Supreme Court, which was granted on October 22, 2008, oral argument heard on November  
 18 8, 2011, ruling issued on April 12, 2012. Furthermore, Cohelan Khoury & Singer has  
 19 successfully tried class cases, obtained appellate reversals of class certification denials  
 20 (*Hicks v. Kaufman and Broad*, (2001) 89 Cal.App.4th 908), certified wage and hour classes,  
 21 and has been appointed class counsel in dozens of cases.

22       5.       As a part of our overall firm philosophy lawyers perform community service  
 23 and pro bono work. Firm volunteer work includes service through the Legal Aid Society-  
 24 Employment Law Center (LAS-ELC), San Diego Volunteer Lawyer Program (SDVLP),  
 25 Consumer Attorneys of San Diego (CASD), and Voices for Children. Mr. Singer currently  
 26 serves on the LAS-ELC Board of Directors. Mr. Cohelan currently serves on the Board of  
 27 Directors for San Diego Volunteer Lawyers Program and completed 24 years of volunteer  
 28 judicial service as a Judge Pro Tem of the San Diego Superior Court. Partner Diana M.

1 Khoury has been a member of the San Diego County Bar Association, Consumer Attorneys  
 2 of San Diego, Consumer Attorneys of California, and American Association for Justice. She  
 3 has continuously served on the Board of Directors for the Consumer Attorneys of San Diego  
 4 (“CASF”) since 2010 and has served on numerous committees through the years for CASF.  
 5 Ms. Khoury is also a member of the board of the San Diego County Bar Association  
 6 Foundation, a 501(c) (3) charitable entity. Recent pro bono victories include a settlement  
 7 with the City of San Diego which prohibits the City from targeting homeless persons for  
 8 illegal lodging tickets under Penal Code Section 467(j). (*Spencer v. City of San Diego*,  
 9 USDC Case No 04CV-2314 BEN (WMC).) The Parties in *Spencer* entered into a settlement  
 10 that has the effect of increasing the number of available City of San Diego shelter beds.

11       6.      Associates at the firm are encouraged to perform pro bono legal services.  
 12 For example, Kimberly Neilson participated in a class action trial advocating on behalf of  
 13 low-income tenants for local rent control ordinance violations which resulted in a verdict on  
 14 the tenants’ behalf. Ms. Neilson has been an active member of the San Diego County Bar  
 15 Association, having served as a committee member; the Lawyers Club of San Diego, having  
 16 served as a committee member and as a volunteer for the annual Women’s Resource Fair;  
 17 and, devotes approximately 10-15 hours each month volunteering and advocating on behalf  
 18 of San Diego County foster youth with Voices for Children, the local affiliate of Court  
 19 Appointed Special Advocates.

20       7.      As Class Counsel, Cohelan Khoury & Singer has actively commenced,  
 21 prosecuted and concluded numerous state and federal class actions, many of which are  
 22 employment law related. Cohelan Khoury & Singer has played a central role in the  
 23 resolution of the following class action cases which have recently received final approval by  
 24 the Court: *Gonzalez, et al. v. Freedom Communications, Inc. d/b/a The Orange County*  
 25 *Register*, Orange County Superior Court Case No. 03CC08756 [home delivery carriers  
 26 misclassified as “independent contractors”], *Aravena v. Cisco Systems, Inc.*, Orange County  
 27 Superior Court Case No. 07CC01367 [OT misclassification claim by IT employees], *Horne*  
 28 *v. Kaiser Foundation Hospitals, Inc.*, Alameda Superior Court Case No. RG07357061 [OT

1 Misclassification by IT employees], *Penuela, et al. v. Southern California Permanente*  
2 *Medical Group*, Los Angeles Superior Court Case No. BC396462 [OT misclassification  
3 claim by IT employees], *First Franklin Employment Cases*, San Diego County Superior  
4 Court Case No. J.C.C.P. 4598 [expense reimbursement claim], *KONICA MINOLTA WAGE*  
5 *CASES*, Orange County Superior Court Case No. J.C.C.P. 4527 [expense reimbursement  
6 claim], *Segal v. Juniper Networks, Inc.*, Santa Clara County Superior Court Case No. 1-09-  
7 CV-142859 [OT misclassification claim by IT employees], *Perez v. Standard Concrete*  
8 *Products, Inc.*, Orange County Superior Court Case No. 30-2008-00211820 [meal and rest  
9 period claim], *Venturini v. Genentech, Inc.*, San Francisco Superior Court Case No. CGC-  
10 09-492494 [OT misclassification claim by IT employees], *Durrani v. Western Digital*  
11 *Corporation, et al.*, Orange County Superior Court Case No. 30-2009-00268212 [OT  
12 misclassification claim by IT Employees], *Watson v. Raytheon Company*, United States  
13 District Court, Southern District of California Case No. 10CV0634 [Ot misclassification  
14 claim by IT employees], *Bills v. Sutter Health*, Alameda Superior Court Case No.  
15 RG09465894 [Ot misclassification claim by IT employees], *Steet v. Alfred Angelo, Inc.*, Los  
16 Angeles Superior Court Case No. BC419429 [OT misclassification claim], *STEROID*  
17 *HORMONE PRODUCT CASES*, Los Angeles Superior Court Case No. JCCP 4363  
18 [consumer products claim], *Ferrari v. Entercom Communications Corp., et al.*, San  
19 Francisco Superior Court Case No. CGC-09-486404 [expense reimbursement claim],  
20 *McKinley v. Entravision Communications Corporation*, Los Angeles Superior Court Case  
21 No. BC434291 [expense reimbursement claim], *Smith v. California Pizza Kitchen*, San  
22 Diego Superior Court Case No. 37-2008-00083992 [OT misclassification claims by  
23 managers and assistant managers], *Picoy v. 20/20 Communications, Inc.*, Los Angeles  
24 Superior Court Case No. BC428743 [expense reimbursement claim], *Dunn v. The Kroger*  
25 *Company, et al.*, Los Angeles Superior Court Case No. Case No. BC323252 [meal and rest  
26 break claims], *Gallen v. Gambro Healthcare, Inc.*, Orange County Superior Court Case No.  
27 04CC00571 [OT claims by nurses], *Rogge v. Safeway, Inc., et al.*, Alameda Superior Court  
28 Case No. RG10505702 [secret shopper reimbursement], *Spears, et al. v. Brake Masters, Inc.*,

1 Sacramento Superior Court Case No. 34-2010-00076319 [OT misclassification claims by  
 2 managers and assistant and floating managers], *Rogers v. Les Schwab Tire Centers of*  
 3 *California, Inc.*, Sacramento Superior Court Case No. 34-2009-00066320 [OT  
 4 misclassification claims by Assistant Store Managers], *Blagmon v. Farmers Insurance*  
 5 *Company, Inc.*, Los Angeles Superior Court Case No. BC 436311 [OT misclassification  
 6 claims by IT employees], *Estrada v. Burrtec Waste Group, Inc. et al.*, San Diego Superior  
 7 Court Case No. 2001-96268 [meal and rest period claims by non-exempt garbage truck  
 8 drivers], *White v. EDCO Disposal Corp., et al.*, San Diego Superior Court Case No. 2011-  
 9 00088803 [meal and rest period claims by non-exempt garbage truck drivers], *Cordova, et*  
 10 *al. v. Republic Services, Inc.*, Alameda Superior Court Case No. RG 11593578 [meal and  
 11 rest period claims by non-exempt garbage truck drivers], *Wells Fargo Bank Wage and Hour*  
 12 *Proceedings*, San Francisco Superior Court Case No. JCCP 4654 [expense reimbursement  
 13 claims by Home Mortgage Consultants]; *Talent v. Leslie's Poolmart, Inc.*, Sacramento  
 14 Superior Court Case No. 2012-00128539 [expense reimbursement claims], among others.

15       8.      We consider ourselves experienced and qualified to evaluate the claims  
 16 alleged in the litigation, and viability of the defenses asserted. Our experience has allowed  
 17 our firm to assist in achieving an efficient resolution of the claims in this matter.

18                   **INTRODUCTION AND BACKGROUND**

19       9.      With this Motion Plaintiffs Terrell Jones, Michael Johnson, Derrick Paige,  
 20 Wilfredo Betancourt, Yolanda McBrayer, and Michael Pierson (“Plaintiffs”) seek final  
 21 approval of a collective action settlement for Plaintiffs and the Class of individuals  
 22 employed by Defendants Agilysys, Inc., and Agilysys NV, LLC. (“Defendants” or  
 23 “Agilysys”) as Installation Specialists (the “IS” employees or positions), who were  
 24 misclassified as “exempt” from the requirements of overtime wages under the Federal Labor  
 25 Standards Act (“FLSA”) at any time during the period, July 5, 2009 through March 4, 2013,  
 26 (“Class Period”).

27       10.     This wage and hour class action and collective action was filed pursuant to  
 28 Federal Rule of Civil Procedure (“FRCP”) Rule 23 and the FLSA. The FLSA collective

1 action involves a total of 125 current and former IS employees. On final approval, the  
 2 proposed non-reversionary Settlement for \$1,478,819 will fully resolve all issues.

3       11. Defendants are reputed to be the leading developer and marketer of  
 4 proprietary enterprise software, services and solutions to the hospitality and retail industries.  
 5 Agilysys services casinos, resorts, hotels, food service venues, stadiums, cruise lines,  
 6 grocery stores, convenient stores, general and specialty retail business and partners.  
 7 Agilysys is a large multi-national corporation with locations nationwide, and develops  
 8 customized software suites for large clients for Point-of-Sale (“POS”) revenue handling. To  
 9 develop a client plan, other employees engage in “site surveys” that result in a detailed and  
 10 pre-packaged plan, custom suited for the client’s business operations. Once the client  
 11 purchases the software packet, it includes all necessary steps, including hardware, system,  
 12 network and computer upgrades necessary to install Agilysys’ proprietary POS software and  
 13 hardware, with numerous step-by-step “Installation and Upgrade Guides” which detail  
 14 virtually every aspect of the installation process to be followed by the IS employees.

15       12. Plaintiffs are former IS employees of Agilysys whose duties entailed the  
 16 installation, configuration, troubleshooting and maintenance of pre-packaged specialized  
 17 software sold by Defendants to large clients in the hospitality industry (i.e., casinos, hotels,  
 18 cruise lines, etc.).

19       13. Plaintiffs’ duties and responsibilities were manual, routine, and repetitive.  
 20 Their job was labor intensive and pre-determined by step-by-step “Installation Guides.” For  
 21 those clients who only require software installation, the IS employees literally point, click  
 22 and read the instructions to download and install software. Occasionally, the site surveyor  
 23 misses something, like the need for an operating system upgrade for the Agilysys software to  
 24 work properly, which then gets re-submitted and included in the installation. The IS  
 25 employees do not engage in any selection of software, hardware, system or application for  
 26 Agilysys’ clients as this is all done by the sales and site surveyors. At its core, the IS  
 27 employees are a technician position, with no significant discretion or independent judgment.  
 28 IS employees merely follow the installation guide, configure, set-up, and troubleshoot

1 Agilysys' software package. Problems with the software or the need for patchwork for any  
 2 missing steps in the installation guide are addressed by developers or the site-surveyor, not  
 3 the IS employees. Once IS employees were sufficiently trained on the software and  
 4 installation guides in various types of hospitality groups, they were trained to be site  
 5 surveyors to move into more refined company positions with less manual work and more  
 6 client development. The IS position required no advanced degree, licensure or state  
 7 sanctioned certification. A basic ability to follow the specifications is all that had to be a  
 8 successful installer.

9       14. During the Class Period, Defendants' normal business hours were 8 a.m. to  
 10 5 p.m., Monday through Friday. Plaintiffs and the IS employees, however, worked beyond  
 11 these regular hours and days due to their work and the nature of their hospitality-industry  
 12 clients' work. The IS employees were expected to be flexible in relation to the clients'  
 13 schedule to minimize the interruption of the clients' business which resulted in working odd  
 14 hours at low impact times to conduct the installation and configuration process. The IS  
 15 employees worked nights and weekends, and were expected to travel with little advance  
 16 notice; otherwise, they would be subject to disciplinary action, including termination. A  
 17 cruise ship, for example, only wanted its POS software installed in the early morning hours  
 18 during which its casino operations were minimal impacted. The same was true for other  
 19 hotels, resorts and casinos, which would require system installations at low-peak times.  
 20 Plaintiffs reported substantial weekly overtime hours worked.

21       15. Plaintiffs contend they and other IS employees could not record all of their  
 22 time worked.

23       16. According to Defendants' employee manual, “[e]xempt employees are  
 24 required to complete a time card on an *exception basis only*” and are “exempt from the  
 25 overtime provisions of the [FLSA].” Plaintiffs contend all IS employees were directed to  
 26 stop recording the actual hours they worked, and instead to insert the hours they were  
 27 budgeted to work that day: “The rule of thumb should be 8 hours budgeted each day onsite.”  
 28 Plaintiffs were instructed to record 8 hours per any day for billable time to clients, even if

1 the daily work was 9, 10 or more hours of actual work.

2       17. The result was that Agilysys had no accurate measure of total hours worked  
 3 necessary to show whether, on an hourly basis, it ever satisfied basic salary thresholds for  
 4 Plaintiffs and/or the Class. For some IS employees, whose wages started around \$16/hour or  
 5 less, if actual work time were tracked, they did not meet the FLSA requirements because the  
 6 hourly rate/wages were diluted by overtime hours worked.

7       **HISTORY OF LITIGATION AND PROCEDURAL BACKGROUND**

8       18. On or about July 5, 2012, Plaintiffs filed the action *Jones, et al. v. Agilysys, Inc., et al.*, Case No. CV-12-3516, in the U.S.D.C. for the Northern District of California, on  
 9 behalf of current and former IS employees of Defendants. Defendants employed IS  
 10 employees in California, as well as throughout the United States. Plaintiffs contend that  
 11 during the relevant Class Periods, the IS employees were misclassified as exempt from the  
 12 overtime provisions of the FLSA and the applicable state wage and hour laws of California,  
 13 Nevada, Florida, Texas, Colorado, and North Carolina. The initial Collective and Class  
 14 Action Complaint (“Complaint”) asserted seven causes of action on behalf of a putative  
 15 class under the FLSA and six putative state law classes pursuant to FRCP Rule 23 for unpaid  
 16 overtime. The California plaintiff, Terrell Jones, also sought to certify six subclasses within  
 17 the California Class for: (1) failure to pay premium wages for noncompliant meal and rest  
 18 periods in violation of California Labor Code §§ 226.7 and 512; (2) failure to provide  
 19 accurate wage statements in violation of California Labor Code §§ 226 and 1174; (3) failure  
 20 to timely pay wages upon termination in violation of California Labor Code §§ 201-203; (4)  
 21 failure to reimburse necessary business expenses in violation of California Labor Code §§  
 22 2802; and (5) unfair competition in violation of California Business & Professions Code §  
 23 17200, et seq.

25       19. With the issuance of the Summons, the Court issued an Order assigning the  
 26 matter to the Honorable Donna M. Ryu and setting an Initial Case Management Conference  
 27 for October 10, 2012.

28       20. On or about July 6, 2012, Plaintiffs mailed a certified letter to the LWDA

1 providing notice of alleged Labor Code violations pursuant to California Labor Code §  
 2 2699(f).

3       21. On or about July 25, 2012, Defendants filed a Declination to Proceed before  
 4 a Magistrate Judge and Request for Reassignment to a United States District Judge. In  
 5 addition, the Parties submitted a Stipulation Extending Time for Defendants to respond or  
 6 otherwise plead to the Complaint from July 27, 2012 to August 26, 2012.

7       22. On or about July 27, 2012, the Court issued an Order Reassigning the matter  
 8 to the Honorable Saundra Brown Armstrong for all further proceedings.

9       23. On or about July 30, 2012, the Court issued a Case Management Scheduling  
 10 Order setting a telephonic Case Management Conference (“CMC”) for October 10, 2012.

11       24. Without indication from the LWDA that it intended to investigate the  
 12 alleged violations, on or about August 9, 2012, Plaintiffs, on behalf of themselves and all  
 13 other similarly situated aggrieved current and former employees of Defendants, filed a First  
 14 Amended Complaint (the “Operative Complaint”) re-asserting the aforementioned claims  
 15 and adding an eighth cause of action for alleged violations of the PAGA.

16       25. On or about August 23, 2012, the Parties filed a Joint Stipulation and  
 17 Motion to Extend Time to File a Responsive Pleading to the Operative Complaint, which  
 18 requested that the Court extend Defendants’ deadline to file a response to the Operative  
 19 Complaint from August 25 to September 26. The request was granted.

20       26. Despite their diligent efforts to meet and confer about the scope and  
 21 substance of the allegations in the Operative Complaint, the Parties required more time to  
 22 exchange information and to discuss the issues in an effort to avoid unnecessary motion  
 23 practice. On or about September 19, 2012, the Parties filed a Joint Motion requesting an  
 24 additional extension of the deadline for Defendants to respond to the Operative Complaint,  
 25 as well as a continuance of the CMC.

26       27. On or about September 21, 2012, the Court entered an Order extending  
 27 Defendants’ deadline to respond to the Operative Complaint to October 26, and continued  
 28 the CMC to December 6.

1           28. With continued meet and confer discussions, an agreement to mediate the  
 2 matter by February 2013 was achieved by the parties. Accordingly, on October 25, 2012, a  
 3 Stipulation and Joint Motion was filed requesting the Court to stay all proceedings,  
 4 including the CMC, and the Rule 26 deadlines, and to toll the statute of limitations (“SOL”)  
 5 for Plaintiffs’ FLSA claims until 30 days after the completion of mediation.

6           29. On or about October 26, 2012, the Court issued an Order (1) staying all  
 7 proceedings in the action until March 15, 2013; (2) tolling the SOL on Plaintiffs’ FLSA  
 8 claims for the duration of the stay; and (3) continuing the CMC to March 20, 2013.

9           30. The Parties appeared before Mark Rudy, an experienced and renowned wage  
 10 and hour mediator. Unfortunately, the Parties were unable to reach an agreement by day’s  
 11 end. As set forth in the next section, a mediator’s proposal was issued and accepted by both  
 12 sides on March 4, 2013. On March 7, the Parties engaged in a post-mediation conference to  
 13 discuss issues relating to the preparation of the Agreement, incentive payments for  
 14 Plaintiffs, multiplier for the California Class, the deadline to file this motion, and the  
 15 continued tolling of the FLSA SOL. In that same conference, the parties agreed to enter into  
 16 a stipulation to continue the CMC, toll the FLSA SOL, and set a deadline to file this motion.

17           31. Pursuant to the parties’ stipulation, on or about March 12, 2013, the Court  
 18 issued an Order (1) vacating the March 20 CMC; (2) extending the tolling of the FLSA SOL  
 19 until 30-days after entry of an order granting final approval of the settlement; and (3)  
 20 initially setting a May 7 deadline for filing this motion (which was continued to June 6  
 21 pursuant to stipulation and order).

22           32. With sufficient investigation, research, document analysis and extrapolation  
 23 of class-wide damages, on or about February 28, 2013, the Parties engaged in serious and  
 24 informed arms-length negotiations before Mr. Rudy, a respected and experienced wage and  
 25 hour mediator in San Francisco, California. Although the matter did not settle on this date,  
 26 significant progress towards reaching an agreement was accomplished. On March 1, Mr.  
 27 Rudy provided the parties with a mediator’s proposal, setting forth the principal terms of the  
 28 Settlement Agreement, which was accepted by the parties on March 4.

1           33. On June 6, 2013, Plaintiffs previously filed a motion for preliminary  
 2 approval of a class settlement. The motion asked the Court to approve two settlement  
 3 classes: (1) a national FLSA class and (2) a Rule 23 California Class. On August 15, 2013,  
 4 the Court denied Plaintiffs' motion on the grounds that the California settlement class failed  
 5 to satisfy Rule 23's numerosity requirement.

6           34. On or about October 9, 2013, the Parties agreed to enter into an amended  
 7 class settlement agreement based on a single nationwide FLSA class.

8           **INVESTIGATION AND EXTENT OF DISCOVERY**

9           35. Substantial investigation, legal research and interviews with Plaintiffs and  
 10 other putative Class Members took place prior to the filing of this class action. Defendants  
 11 operate multiple offices throughout California and the United States in which it employs IS  
 12 employees, including Arizona, Florida, Georgia, Maryland, Mississippi, North Dakota, New  
 13 Jersey, Nevada, New York, Oregon, Pennsylvania, Texas, Virginia, Washington, and West  
 14 Virginia. Six class representatives were located and retained to represent the FLSA Class.  
 15 Due to the numerous states involved, significant legal research had to be performed to  
 16 determine the applicable exemptions, overtime requirements, available remedies, and statute  
 17 of limitations ("SOLs") of each state.

18           36. Plaintiffs, and other putative Class Members, were interviewed to ascertain  
 19 their duties and method of compensation to determine whether the IS employees fell within  
 20 the Computer Professional or Administrative exemptions. Their duties were then compared  
 21 to the applicable state and federal laws and regulations to determine whether their duties met  
 22 the respective tests. In addition, Plaintiffs, and other putative class members, were  
 23 interviewed to determine the amount of overtime hours they worked and requested to  
 24 produce documents in their possession which supported their claims.

25           37. In response, Plaintiffs, as well as other putative class members, produced to  
 26 Plaintiffs' counsel over 7,000 pages of documents and electronic data which included,  
 27 among other things: (1) Defendants' employee handbook; (2) written job descriptions of IS  
 28 employees; (3) timesheets and timecards; (4) emails; (5) policies relating to travel, comp

1 days, recordation of hours and expenses; (6) paycheck stubs; (7) project schedules; (8)  
 2 installation schedules; (9) project and status reports; (10) site surveys; (11) travel receipts;  
 3 (12) expense reports; (13) performance reviews; (14) installation or configuration manuals  
 4 and guides; and (10) a related prior class action lawsuit. Plaintiffs' counsel painstakingly  
 5 reviewed each of the documents produced to ensure a complete investigation and with an  
 6 eye towards successfully proving the allegations contained in the Operative Complaint on a  
 7 class-wide basis. This initial workup and acquisition of documents proved crucial in the  
 8 successful prosecution of this class action.

9       38. Subsequent to the filing of the Operative Complaint, the Parties engaged in  
 10 extensive cooperative informal discovery and the exchange of documents and information.  
 11 In addition to the documents produced by Plaintiffs, Defendants provided extensive  
 12 documents and thousands of pages of putative class data to Plaintiffs and Class Counsel to  
 13 review and analyze. This information included employment data for the entire putative  
 14 Class, policies and documents relevant to the issues in the litigation, and Plaintiffs' wage  
 15 statements, expense reports, and personnel files.

16       39. On September 21, 2012, Defendants produced Plaintiffs' personnel records,  
 17 which totaled 665 pages.

18       40. On January 8, 2013, Defendants produced an additional 548 pages of  
 19 documents consisting of job descriptions for the IS employees and redacted Class data for  
 20 employees who held IS positions, as well as expense report data, billable hour data, and  
 21 wage statements of the Plaintiffs. This information was also provided in three separate MS  
 22 Excel spreadsheets, containing over 5,500 lines of combined data.

23       41. On January 17, 2013, after meeting-and-conferring regarding the scope of  
 24 the putative Class and which job titles encompass the Class, Defendants provided Plaintiffs  
 25 with an additional 24 pages of documents, comprising of job descriptions and redacted Class  
 26 data for the IS positions.

27       42. Also provided to Plaintiffs on January 17, 2013 was a MS Excel spreadsheet  
 28 made up of 718 lines of data representing: (1) employee ID; (2) employment State; (3) last

1 and original hire dates; (4) seniority date; (5) termination date; (6) status as of 12/26/2012;  
 2 (7) length of service in weeks; (8) job begin and job end dates; (9) division; (10) location;  
 3 and (11) job title. Through manipulation of this spreadsheet data, Plaintiffs were able to  
 4 determine the number of unique employee ID numbers (prospective Class Members), the  
 5 number of current and former employees, and the number of eligible workweeks through  
 6 December 2012.

7       43. On February 20, 2013, Defendants produced 64 more pages of Plaintiffs'  
 8 time sheets for the May 2011 through September 2011 time period.

9       44. Plaintiffs were able to use the data provided by Defendants, as well as the  
 10 information gathered from Plaintiffs, to calculate for the Class Period, the estimated number  
 11 of workweeks, the average hourly, overtime and double-time rates of pay, and the average  
 12 hours of overtime worked each week. This information was then used to create Plaintiffs'  
 13 mediation damage model and calculate the amount of unpaid overtime wages owed to class  
 14 members during the Class Period. All of the information obtained during the investigative  
 15 and discovery phase, allowed the Parties to prepare for a class-wide damage model and to  
 16 prepare for a meaningful mediation on February 28, 2013.

17       **SUMMARY OF AMENDED SETTLEMENT AGREEMENT TERMS**

18       45. **Gross Settlement Amount.** Subject to Court approval, Plaintiffs and the  
 19 Class settled their FLSA claims against Defendants for the non-reversionary Gross  
 20 Settlement Amount ("GSA") of \$1,478,819.00, which sum includes (a) attorneys' fees of up  
 21 to 25% of the GSA or rather \$369,704.75; (b) litigation costs of \$21,256.51; (c) Class  
 22 Representative Payments of up to \$5,000 to each of the six named Plaintiffs; and (d) claims  
 23 administration expenses to Rust Consulting, Inc., of \$19,125.80.

24       46. **Net Settlement Amount.** After all Court-approved deductions, the  
 25 remaining sum, the Net Settlement Amount ("NSA") estimated at \$1,038,731.94 will be  
 26 entirely distributed proportionally to Class Members who have returned Claim Forms/FLSA  
 27 Consent to Join Forms, ("Participating Class Members"). Participating Class Members will  
 28 receive a share of the NSA based upon the number of weeks he or she worked during the

1 Class Period in relation to the number of weeks worked by all Participating Class Members.  
 2 With a NSA of \$1,038,731.94 divided by the aggregate number of weeks worked by  
 3 Participating Class Members, Participating Class Members can expect to receive an  
 4 estimated gross amount of \$89.15 for each week worked during the Class Period. The  
 5 Notice to the Class advised that for each week worked during the Class Period, a Class  
 6 Member could expect to receive \$76.79.

7       47. Should a Class Member not return a Claim Form, his/her share of the NSA  
 8 will be proportionately distributed among the Participating Class Members. No portion of  
 9 the Settlement will revert to Defendants.

10       48. **Released Claims.** Participating Class Members, (only those who return a  
 11 Claim Form/FLSA Consent to Join form) will release any and all actions, causes of action,  
 12 grievances, obligations, costs, expenses, damages, losses, claims, liabilities, suits, debts,  
 13 demands, and benefits (including attorneys' fees and costs incurred), of whatever character,  
 14 in law or in equity, known or unknown, asserted, whether in tort, contract, or for violation of  
 15 any state or federal statute, rule or regulation, including state or federal wage and hour laws,  
 16 whether for economic damages, non-economic damages, restitution, penalties, or liquidated  
 17 damages *arising out of or related* to the claims and facts asserted including, without  
 18 limitation, claims based on the allegations in the First Amended Complaint ("FAC").

19       **THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS**

20       49. While Plaintiffs believe in the merits of their case, they also recognize the  
 21 inherent risks and uncertainty of litigation and understand the benefit of providing a  
 22 significant settlement sum now as opposed to risking (i) denial of the FLSA collective action  
 23 certification; and/or (ii) an unfavorable result on the merits on summary judgment, trial  
 24 and/or on an appeal, a process that can take several more years to litigate.

25       50. Plaintiffs' claims involve complex and disputed legal issues and fact-  
 26 specific arguments which the Parties litigated fiercely since inception of the action.  
 27 Plaintiffs firmly believe in the strength of their claims, but Agilysys also has strong defenses  
 28 to liability. There are also risks to Plaintiffs' ability to maintain conditional certification of

1 a collective action.

2 51. The FLSA claim for the alleged failure to pay overtime wages to the Class  
 3 by instructing them to not report all hours worked would involve representative sampling  
 4 and testimony of Class Members and of Defendants' management in offices around the  
 5 country due to the complete lack of time records.

6 52. Although Defendants believe Plaintiffs will face several steep hurdles going  
 7 forward should this matter not resolve, Agilysys is also mindful there are risks and  
 8 significant expenses associated with proceeding further.

9 53. Based upon information obtained from the Plaintiffs and from other putative  
 10 Class Members through the informal interview process regarding the number of overtime  
 11 hours they worked, the Classes' blended hourly overtime rate of \$37.95, and the 12,973  
 12 discrete number of weeks worked by the Class produced by Defendants, Class Counsel  
 13 estimated the value of each overtime hour to be \$492,325.35. Assuming the Class worked  
 14 five to ten hours of overtime per week, Defendants' liability was estimated to be in the range  
 15 of \$2,461,626.75 to \$4,923,253.50.

16 54. Plaintiffs' estimate of the overtime exposure was subject to rational  
 17 discounting in light of the following factors: (1) Defendants' legal argument concerning  
 18 obstacles to conditional certification under the FLSA; (2) Defendants' assertion that the  
 19 aggregate overtime hours worked based upon information provided by Plaintiffs and other  
 20 Class Members is unreliable and inaccurate; (3) Defendants' contention there were weeks  
 21 during which IS employees did not work and yet were paid their full salaries; and (4)  
 22 Defendants' contention that some overtime hours were worked on cruise ships while in  
 23 international waters and/or in foreign countries. Defendants vehemently contend that neither  
 24 state nor federal laws would allow Plaintiffs to recover damages for overtime hours worked  
 25 in foreign territory.

26 55. The proposed non-reversionary Settlement of \$1,478,819 is 60% to 30%, of  
 27 the estimated potential liability ranging from \$2,461,626.75 to \$4,923,253.50, respectively.  
 28 Class Counsel submits this range is very reasonable in light of the risks of obtaining an

1 unfavorable decision on certification, summary judgment or trial, which is supported by the  
 2 Court's Order Granting Preliminary Approval filed January, 10, 2014. [Docket No. 33.]

3       56.    This Court determined the potential collective members were "similarly  
 4 situated" within the meaning of the FLSA for conditional certification. [Docket No. 33.]

5       57.    The Court determined that Plaintiffs had adequately demonstrated the  
 6 potential collective action members were subject to the same policy that resulted in  
 7 Agilysys' failure to pay them wages to which they were lawfully entitled under the FLSA.  
 8 [Docket No. 27.]

9       58.    In granting preliminary approval of the proposed Settlement on January 10,  
 10 2014, the Court approved the proposed Class Notice, subject to its requested modifications,  
 11 appointed the six named Plaintiffs as Class Representatives, and Bisnar|Chase and Cohelan  
 12 Khoury & Singer as Class Counsel, and appointed Rust Consulting, Inc., ("Rust") as the  
 13 administrator to administer the notice and opt-in claims process.

14                   **NOTICE TO THE CLASS AND CLASS PARTICIPATION**

15       59.    On receipt of the Class list from Defendants, Rust conducted a National  
 16 Change of Address database search to update Class Member addresses.

17       60.    On January 31, 2014, Rust mailed the Court-approved Notice of Class  
 18 Action Settlement ("Notice"), Claim Form/FLSA Consent To Join Form, and a pre-printed,  
 19 postage paid return envelope (collectively "Class Notice") to 129 members of the Class.

20       61.    The Notice informed the Class of the material terms of the Settlement, (i.e.,  
 21 the non-reversionary nature of the settlement funds and the formula for distribution of the  
 22 settlement monies), their rights to participate in the Settlement by choosing to opt-in with  
 23 the return of a signed Claim Form, to object to the Settlement, and the procedures and timing  
 24 for doing each act. The Notice also provided the date, time, and place scheduled for the  
 25 Final Approval Hearing and instructions if a Class Member wished to be heard at the time of  
 26 the hearing. The Notice further informed the Class of the claims to be released in exchange  
 27 for a share of the proposed Settlement should they return a Claim Form.

28       62.    The accompanying Claim Form included the Class Member's individualized

1 information upon which their share of the Settlement would be calculated, i.e., the number  
 2 of weeks worked during the Class Period, and based thereon, the estimated amount each  
 3 could expect to receive if he/she opted in to the Settlement.

4       63.    Regarding Class Members for whom Rust could not locate valid addresses,  
 5 Class Counsel independently obtained the services of an investigator who successfully  
 6 located these Class Members.

7       64.    On March 10, 2014, Rust mailed a postcard to 55 members of the Class—who<sup>1</sup>  
 8 had not by that date returned a Claim Form—and provided its toll-free number if the Class  
 9 Member needed to request another Class Notice be mailed to them.

10      65.    The Class has responded favorably to the proposed Settlement, with 86% of  
 11 the Class, (107 of 125), choosing to participate in the Settlement. The Claims process  
 12 included the successful mailing of the Notice and Claim Form/FLSA Consent to Join Form  
 13 to *all members of the Class*, a reminder postcard, and Class Counsels' response to numerous  
 14 Class Member calls during the claims period.

15      66.    These 107 Participating Class Members represent 90% of all weeks worked  
 16 by the Class, and claim \$934,858.75 before redistribution of the claimed shares of the NSA.

17      67.    At the weekly pay rate of \$89.15, these Participating Class Members will  
 18 receive an average payment of \$9,707.78, and the highest payment estimated at \$28,309.90.

19      68.    Moreover, not a single objection to the Settlement was filed, or served on  
 20 the administrator, or Plaintiffs' Counsel.

21      69.    Plaintiffs therefore submit that the exceptionally high participation rate,  
 22 coupled with the lack of a single objection, demonstrates the Class' acceptance of the  
 23 Settlement as one which is fair, adequate and reasonable and consistent with this Court's  
 24 finding, i.e., "The Court finds that the settlement represents a reasonable result, particularly  
 25 in light of the risks and delay inherent in further prosecution of the action." [Docket No.  
 26 33.] In light of all the information provided above, the proposed Settlement should be  
 27 granted final approval.

**REQUESTED ATTORNEYS' FEES/LITIGATION EXPENSES/CLASS  
REPRESENTATIVE PAYMENTS**

70. Under the Settlement, Class Counsel now respectfully moves for an award of attorneys' fees for \$369,704.75, or rather 25% of the GSA common fund, litigation costs of \$21,256.51 originally estimated to be \$25,000, Class Representative Payments of \$5,000 to each of the six named Plaintiffs, and administration expenses of \$19,125.80 to Rust, all as approved by this Court. Each of these sums is fair and reasonable, Defendants do not oppose these requests, and not a single member of the Class objected to these requests.

71. Class Counsel submits that the proposed Settlement provides a substantial recovery for the Class and that an analysis of this factor militates heavily in favor of approving the fee request.

72. Plaintiffs may have a meritorious case, but Defendants have represented they would continue to vigorously contest the validity Plaintiffs' overtime claims on several bases: 1) the information Class Counsel used to formulate a class-wide damage model (i.e., informal interview of putative class members) was flawed, unreliable, and inaccurate, 2) there were weeks wherein the Class Member did not work and could not have accrued overtime, 3) Defendants paid Class Members their full salaries even when they were not on specific assignments, 4) overtime hours fluctuated, with some hours worked on cruise ships while traveling in international waters and/or in foreign countries.

73. The overall assessment of claim viability, even assuming final certification, presented several significant difficulties which included (1) the risk of losing at trial (2) the lack of time records; and (3) the lack of willingness to participate by some current employees whose role beyond an absent class member (such as a testifying witness or declarant) would cause them to hesitate to assist for fear, whether real or imagined, of retaliation.

74. While Plaintiffs' counsel is firmly convinced there is general accord that the work performed by the Class are non-exempt, this is not a given and the systems and specialized platforms that Agilysys deploys for its clients could cause a lay jury to find the

1 work was sufficiently discretionary and required specialized knowledge such that the Class,  
 2 even certified, could lose and gain nothing at trial. A fair settlement such as this, which  
 3 provides a certain payout that accounts for an approximation of work offers a way for  
 4 Agilysys to avoid costly further litigation and for Class Members, including current  
 5 employees, to receive certain compensation without attenuated circumstances inherent in the  
 6 employer-employee relationship.

7 75. Class Counsel's extensive experience in these types of cases allowed them to  
 8 effectively and efficiently present the Class' claims to the mediator and to Defendants, to  
 9 persevere through difficult and contentious settlement negotiations, reach a settlement, and  
 10 memorialize the terms in the Amended Settlement Agreement now before the Court for final  
 11 approval. Class Counsel respectfully submits that without their experience and tenacity, this  
 12 Settlement could not have been achieved. Less adept, experienced, or determined lawyers likely  
 13 would not have been able to achieve in the results in this case.

14 76. Having undertaken this litigation on a contingent fee basis, Class Counsel  
 15 understood from the outset they were embarking on a complex, expensive and lengthy litigation,  
 16 which would require the investment of hundreds, if not thousands, of hours of attorney time, with  
 17 no guarantee of ever being compensated for the investment of time and money the case would  
 18 require. In undertaking that responsibility, Class Counsel had to assure that sufficient attorney  
 19 resources were dedicated to the successful prosecution of this litigation. Invariably, the  
 20 dedication of resources precluded Class Counsel from working on cases whose outcome was  
 21 more certain.

22 77. In analogous wage and hour lawsuits and settlements, California District Courts  
 23 have awarded attorneys' fees in amounts equal to or more than Class Counsel's fee request, e.g.

24 (1) *Gould v. Rosetta Stone, Ltd.*, USDC Northern District, Case No. C 11-01283  
 25 (SBA), 2013 U.S. Dist. LEXIS 138921, awarding attorneys' fees of 25% of a \$600,000 in a  
 precertification misclassification class action,

26 (2) *In re Wal-Mart, Inc., Wage & Hour Litig.*, USDC Northern District, Case No.  
 27 06-02069 (SBA), 2011 U.S. Dist. LEXIS 2225, awarding attorneys' fees of 27% of a \$86 million  
 settlement in a certified unpaid wages class action;

28 (3) *Birch v. Office Depot*, USDC Southern District, Case No. 06CV1690 (DMS)  
 awarding attorneys' fees of 40% of a \$16,000,000 settlement in a precertification meal and rest

1 period class action);

2 (4) *Huang v. SBC Services, Inc.*, USDC Southern District, Case No. 06-CV-2238  
 3 (DMS/WMC) (Hon. William M. McCurine -- awarding attorneys' fees of 30% of a \$11,200,00  
 settlement in a pre-certification misclassification class action,

4 (5) *Clark, et al. v. Michaels Stores, Inc.*, USDC Southern District, Case No. 05-CV-  
 5 1678 WQH (JMA) (Hon. William Q. Hayes -- awarding attorneys' fees of 30% of \$4,300,000  
 settlement in pre-certification meal and rest period class action);

6 (6) *Watson v. Raytheon Company*, USDC Southern District, Case No. CV-10-cv-  
 7 00634 LAB RBB (Hon. Larry B. Burns – awarding attorneys' fees of 33-1/3% of a \$2,000,000  
 settlement in a certified misclassification class action);

8 (7) *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. CV-09-  
 9 2745 DMS JMA, (Hon. Dana M. Sabraw – awarding attorneys' fees of 33-1/3% of \$1,500,000  
 settlement in a pre-certification expense reimbursement, rest and meal period class action);

10 (8) *Green, et al. v. Penske Logistics, L.L.C.*, et al., USDC Southern District, Case  
 11 No. CV-09-0069 DMS (CAB) (Hon. Hon. Dana M. Sabraw -- awarding attorneys' fees of 33% of  
 a \$500,000 settlement in a pre-certification vacation policy class action); and

12 (9) *Gardner v. GC Services, LP.*, USDC Southern District, Case No. 10cv0997-IEG  
 13 (CAB) – (Chief Justice Irma E. Gonzalez – awarding attorneys' fees of 30% of a \$975,000  
 settlement in a pre-certification failure to pay straight and overtime wages class action).

14 In short, Class Counsel's fee request is in line with awards in similar cases. This factor  
 15 also supports Class Counsel's fee request.

16 78. Class Counsel has worked 2,132.6 hours and has calculated the lodestar fee on  
 17 those hours at \$945,870.00 at rates reflecting those earned in the market place, and those  
 18 previously approved by other Courts in California.

19 79. Included within these hours is the anticipated 20 to 25 hours, to prepare for  
 20 and attend the final approval hearing, to provide supplemental information and  
 21 documentation following the filing of the final approval and fees' motions should the Court  
 22 request, to interact with Defense counsel and the administrator with respect to late claims,  
 23 funding and distributions, approval of checks, transmittal letters, tax forms, respond to Class  
 24 Member inquiries, handling uncashed checks, etc.

25 80. As Class Counsel's lodestar fee is over their fee request of \$369,704.75, a  
 26 multiplier on their lodestar fee is not sought. Attached hereto as Exhibits 1 is a true and correct  
 27 copy of the Summary of Hours and Lodestar Fee by attorneys representing the Class.

28 81. Class Counsel's skill and experience support their hourly rates. Class Counsel's  
 hourly rates are between \$450 and \$850 and are in line with rates typically approved in wage and

1 hour class action litigation in California.

2        82. I am a Principal and Senior Partner, and have devoted 55.1 hours in representing  
 3 the Class in this case. I am a 1970 graduate of the University of California at San Diego and  
 4 received a law degree from Hastings School of Law in 1973. I am a member of the State Bar of  
 5 California, admitted in 1974, the San Diego County Bar Association, Consumer Attorneys of San  
 6 Diego and Consumer Attorneys of California. I have successfully litigated numerous complex  
 7 civil matters to verdict, jury and non-jury. My main areas of practice include civil tort litigation,  
 8 personal injury, business torts, antitrust and class action cases. In recent years, I have emphasized  
 9 wage and hour class action litigation, including all aspects of overtime eligibility and the  
 10 evolving nature of California and federal employment law. I have been approved as a continuing  
 11 legal education lecturer and have participated in seminars on class action wage and hour issues,  
 12 the complexities of mediation, and the procedural requirements involved in class action  
 13 settlements. My hourly rate is \$750 per hour. The number of hours I expended for work  
 14 performed and total attorney's fees of \$41,325.00 are reasonable and necessary.

15        83. Timothy D. Cohelan, Principal and Senior Partner, has devoted 35.90 hours in  
 16 representing the Class in this case. Mr. Cohelan has been a member of California Bar since 1974  
 17 and the District of Columbia since 1996 and has been in continuous practice since 1974. Mr.  
 18 Cohelan has tried class and non-class civil matters to conclusion and collectively has achieved  
 19 substantial recoveries for persons participating in class actions. Mr. Cohelan is the author of  
 20 Cohelan on California Class Actions (Thomson West 1997-2013), part of Thomson West's  
 21 Expert Series, which is updated annually. Mr. Cohelan's hourly rate is \$850 per hour. The  
 22 number of hours expended for the work performed results in attorney's fees of \$11,135.00 are  
 23 reasonable and necessary.

24        84. Michael D. Singer, Managing Partner, has devoted 84.4 hours to this matter  
 25 representing the Class. Mr. Singer is a 1984 graduate of U.C. Hastings Law School and  
 26 graduated magna cum laude from San Francisco State University in 1980 with a B.A. in  
 27 English. He was admitted to the State Bar of California in 1984 and the State Bar of Colorado  
 28 in 2001. Mr. Singer is a contributing author on the CEB publication California Wage and

1 Hour Law: Compliance and Litigation (2010, updated annually), in which he wrote the  
 2 opening chapter overview on California Wage and Hour laws, including the public policy  
 3 underpinnings for those laws. He has also served as a columnist for the California State Bar,  
 4 Litigation Section on wage and hour litigation and has contributed articles on wage and hour  
 5 and class action issues through the years to numerous California publications. Mr. Singer  
 6 lectures several times each year for continuing education courses on wage and hour and class  
 7 action issues at events in San Diego, Orange County, Los Angeles, and San Francisco. He also  
 8 serves as wage and hour amicus liaison for California Employment Lawyers, drafting,  
 9 reviewing, and coordinating amicus filings on wage and hour issues in the California Supreme  
 10 Court and Courts of Appeal. Mr. Singer has been engaged in the practice of labor and  
 11 employment law since 2000, handling well over 100 wage and hour class actions and several  
 12 individual labor cases. He has litigated several types of employment actions, including  
 13 complex ERISA employee welfare benefit plan cases, as well as wage and hour class actions  
 14 before Federal and State Courts in California. In addition, Mr. Singer has drafted numerous  
 15 appellate briefs as the appellant, respondent, or amicus curiae in employment class and  
 16 individual actions. As co-Class Counsel in the *Brinker Restaurant Corp. v. Superior Court*  
 17 [(2008)165 Cal.App.4th 25] matter, Mr. Singer argued before the Fourth District Court of  
 18 Appeal in May 2008 on transfer from the California Supreme Court, and co-authored the  
 19 granted Petition for Review of the July 22, 2008 decision in the California Supreme Court,  
 20 which was granted on October 22, 2008, oral argument heard on November 8, 2011, ruling  
 21 issued on April 12, 2012. Mr. Singer's hourly rate is \$750 per hour. On occasion, Mr. Singer  
 22 performs hourly work and has been compensated at his billing rate of \$750 per hour. The  
 23 number of hours Mr. Singer expended for work performed in this matter and total attorney's  
 24 fees of \$63,300.00 are reasonable and necessary.

26       85.     Diana M. Khoury, a Partner of Cohelan Khoury & Singer, is a 1975 graduate  
 27 of San Diego State University where she received her Bachelor's of Science degree. She  
 28 received her law degree from Western State University College of Law in 1986 and was

1 admitted to the State Bar of California 1987. Since 1987, Ms. Khoury has been a member of  
2 the San Diego County Bar Association, Consumer Attorneys of San Diego, Consumer  
3 Attorneys of California, and American Association for Justice. She has continuously served  
4 on the Board of Directors for the Consumer Attorneys of San Diego (“CASD”) since 2010 and  
5 has served on numerous committees through the years for CASD as well as the San Diego  
6 County Bar Association. Ms. Khoury has been selected as a “Super Lawyer” for 2010, 2011,  
7 2012 and 2013, by her peers, Southern California Super Lawyers Magazine, and is AV rated  
8 by Martindale –Hubbell. Ms. Khoury also serves on the San Diego County Bar Association  
9 Foundation, a 501(c) (3) charitable entity. Ms. Khoury has successfully litigated numerous  
10 personal injury matters and has taken many to verdict in jury trials and beyond. In recent  
11 years, in the wage and hour class action litigation area, she has been primarily responsible for  
12 the negotiation of the terms of the settlement agreement (following agreement of the principal  
13 terms of the settlement), the class notices, claim forms, and other class documents, and taking  
14 these class actions settlement through the approval process and to judgment and beyond. Ms.  
15 Khoury worked 237.3 hours in representing the Class. Ms. Khoury has been primarily  
16 responsible for advancing cases in our firm through to final approval on no less than 135 cases  
17 over the course of these past five years. Ms. Khoury's hourly rate is \$650 per hour. The  
18 number of hours expended by Ms. Khoury for work performed and the corresponding  
19 attorney's fees of \$154,245.00 are reasonable and necessary.

21        86.     J. Jason Hill, an Associate at the law firm of Cohelan Khoury & Singer,  
22 invested 379 hours to representing the Class in this matter. Mr. Hill is a 1992 graduate of the  
23 University of Illinois at Urbana-Champaign and holds a B.A. in Philosophy, Political Science  
24 and Communications. In 1995, he received his J.D. degree from California Western School of  
25 Law, where he was a member of the Law Review an International Law Journal, as well as  
26 editor of the Telecommunications Law Forum. Currently, Mr. Hill is admitted to the bar in  
27 both California and Illinois, and is a broker licensed by the California Department of Real  
28 Estate. He maintains memberships not only with the San Diego County Bar Association, but

1 also the National Association of Realtors, the California Association of Realtors and the San  
 2 Diego Association of Realtors. Prior to joining Cohelan Khoury & Singer, Mr. Hill  
 3 represented large institutional clients in a variety of civil litigation settings, including  
 4 insurance coverage, employment law, health care law, general and professional liability, as  
 5 well as, premises and product liability claims. He has particular emphasis on all aspects of  
 6 professional liability claims in a healthcare setting, as well as claims brought pursuant to the  
 7 Emergency Medical Treatment and Active Labor Act (EMTALA) and the Elder Abuse and  
 8 Dependent Adult Civil Protections Act (EADACPA). Mr. Hill is also an accomplished  
 9 appellate practitioner and has briefed and/or argued over 40 matters in both state and federal  
 10 courts of appeal, yielding several published decisions on a range of legal issues. Mr. Hill's  
 11 hourly rate is \$450 per hour. The number of hours expended by Mr. Hill for work performed  
 12 and total attorney's fees of \$170,550.00 are reasonable and necessary.

13       87.     The amount of time spent on prosecuting this case was reasonable and justified,  
 14 particularly in light of the result achieved for the Class.

15       88.     Class Counsel's skill and experience support their hourly rates. Their practice is  
 16 limited exclusively to litigation, focusing on the representation of employees and consumers in  
 17 wage and hour and consumer class action matters and have been appointed class counsel or co-  
 18 class counsel in over 200 of these cases. Cohelan, Khoury & Singer's hourly rates have been  
 19 approved by Courts in California in Los Angeles, Sacramento, Orange County and San Diego  
 20 counties.

21       89.     As leading attorneys in the field, Plaintiffs' counsel continually monitor the  
 22 prevailing market rates charged by both defense and plaintiff law firms and set the billing rates of  
 23 their attorneys and paralegals/law clerks to follow the prevailing market rates in the private sector  
 24 for attorneys and staff of comparable skill, qualifications and experience. Other wage and hour  
 25 attorneys working as class counsel before California courts charge comparable if not higher rates.  
 26 Attached hereto as Exhibit 3 and 4 are true and correct copies of the Westlaw Court Express's  
 27 Legal Billing Report, Volume 14, Number 3, California Region for December 2012 and the 2012  
 28 National Law Journal survey of hourly billing rates for Partners and Associates.

1           90. The time expended on this litigation by Class Counsel was necessary,  
 2 reasonable, and non-duplicative. Class Counsel committed 2,132.6 of attorney and staff hours on  
 3 this case before and after this action was filed.

4           91. Although two firms worked on this case, Class Counsel divided all work with  
 5 the goal of minimizing the duplication of efforts. The hours expended by Class Counsel are  
 6 reasonable.

7           92. Class Counsel have incurred costs totaling \$21,256.51. These expenses were  
 8 incidental and necessary to the effective representation of the Class. Attached hereto as exhibit 2  
 9 is a true and correct copy Itemization of Cohelan Khoury & singer's Costs.

10          93. Subject to the Court's approval, Class Counsel requests for each of the six  
 11 named Plaintiffs the modest sum of \$5,000, for their time and effort prosecuting this case,  
 12 risks undertaken for the payment of costs if this action had been unsuccessful, stigma upon  
 13 future employment opportunities for having sued a former employer, a general release of all  
 14 claims related to their employment, and the substantial recoveries to be enjoyed by the  
 15 Class.

16          94. Plaintiffs risked a potential judgment taken against them if this matter had not  
 17 been successfully concluded.

18          95. The risk of payment of Defendants' costs, in itself alone, is a sufficient basis for  
 19 an award to each of these Class Representatives. Few individuals are willing to take this risk,  
 20 and these class representatives championed a cause for others employed throughout the nation  
 21 with potentially huge monetary risks.

22          96. Plaintiffs also risked their professional reputations by commencing legal action  
 23 against their former employer. Because their names are publicly associated with this lawsuit, the  
 24 named Plaintiffs risk being perceived by current or future employers as litigious or  
 25 troublemakers, and having employment opportunities denied on that basis.

26          97. In Class Counsel's experience, the typical enhancement award in wage and hour  
 27 cases ranges from \$5,000 to \$75,000, although some awards may be higher.

28          98. Each Plaintiff invested much personal time and effort into the investigation

1 both before and after this class action was commenced, the prosecution, and the settlement  
2 of the case, as set forth in their respective declarations. It should also be emphasized that  
3 the requested awards in the aggregate amount of \$30,000 is modest, i.e., .02%, in  
4 comparison to the total settlement amount and consistent with applicable law.

5 99. The requested enhancement payments were stated in the Class Notice and no  
6 one objected to said request.

7 100. Class Counsel also seeks payment of \$19,125.80 to the appointed Claims  
8 Administrator's, Rust Consulting, Inc., for its work in administering the proposed Settlement.  
9 The Declaration of Stacy Roe submitted details the work Rust performed and the work remaining  
10 to be performed by Rust following final approval under the Amended Settlement Agreement.  
11 The requested amount is fair and reasonable and should be awarded for the excellent work it has  
12 performed and for all work required to conclude its duties under the Settlement.

13 I declare under the penalty of perjury under the laws of the United States of  
14 America that the foregoing is true and correct and that this declaration was executed on this  
15 15th day of April, 2014 in San Diego, California.

16 /s/ Isam C. Khoury

17 Isam C. Khoury, Declarant

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